IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 3202 to 3204 of 2006
With
CIVIL APPLICATION NO.476 to 478 of 2007
With
FIRST APPEAL Nos.3809 to 3812 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVJIBHAI NATVARBHAI PATEL & 3 - Appellant(s)
Versus
SPECIAL LAQ OFFICER & 1 - Defendant(s)

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Appearance :
MR YATIN SONI for Appellant(s) (In FA No.3202 to 3204/2006)

MR KD PANDYA for Respondent-1 (In FA No.3202 to

3204/2006)

MR AJAY R MEHTA for Respondent-2 (In FA No.3202 to 3204/2006)

MR AJAY R MEHTA for Appellants (In FA No.3809 to 3812/2006)
MR YATIN SONI for Respondent-1 (In FA No.3809 to 3812/2006)
MR KD PANDYA for Respondent-2 (In FA No.3809 to 3812/2006)

MR YATIN SONI for Applicant(s) (In CA No.476 to 478/2007)

MR KD PANDYA for Respondent-1 (In CA No.476 to 478/2007)

MR AJAY R MEHTA for Respondent-2 (In CA No.476 to 478/2007)

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/03/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. First Appeal Nos.3202/06 to 3204/06 are filed by the claimants under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 where their claim is that the Reference Court committed error in awarding only Rs.55/- as additional compensation to them for their acquired lands, over and above compensation awarded to them by the Special

Land Acquisition Officer at the rate of Rs.16.50 Ps. per sq.mt. by his award dated May 7,2001 and that they should be awarded further additional amount of compensation at the rate of Rs.94.10 Ps. per sq.mt. for their acquired lands. Civil Application Nos.476/07 to 478/07 are filed by the claimants in the above numbered appeals under Order 41 Rule 27 of the Code of Civil Procedure, 1908 praying that they be allowed to adduce additional documentary evidence as mentioned in the applications at the appellate stage, in the interest of justice.

2. What is challenged in First Appeal No.3809/06 to 3812/06 filed under Section 54 of the Act read with Section 96 of the Code of Civil Procedure is the legality of award dated August 8,2005 rendered by the Reference Court by which the claimants have been awarded additional amount of compensation at the rate of Rs.47.30 Ps. per sq.mt. for their acquired lands, over and above compensation offered to them at the rate of Rs.22/- per.sq.mt. by the Special Land Acquisition Officer vide his award dated January 25,2002.

3. From the record of the case it is evident that

all the abovereferredto proceedings relate to acquisition of lands situated at village Uvarsad, Taluka and District Gandhinagar for the public purpose of well drilling by O.N.G.C., and drilling of Well No.EDW-4 of ONGC. The record further shows that while passing the impugned award, the Reference Court has relied upon previous award of the Reference Court relating to the lands of village Uvarsad in Land Acquisition Reference No.30/99. As common questions of facts and law arise for determination of this Court, this Court proposes to dispose of the above numbered proceedings, with the consent of the learned advocates for the parties, by this common judgment.

4. A proposal was received by the State Government to acquire the lands of village Uvarsad, Taluka and District Gandhinagar for the public purpose of well drilling by O.N.G.C. On perusal of the said proposal, the State Government was satisfied that the lands of village Uvarsad specified therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on December 8,1999. Thereafter, necessary inquiry as contemplated by Section 5A of the Act was made and a

report was submitted by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on January 16,2000. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated May 7,2001 offered compensation to the claimants at the rate of Rs.16.50 Ps. per sq.mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly References were made to the District Court,Gandhinagar where they were numbered as Land Acquisition Reference Case No.2/02 to 4/02.

5. On behalf of the claimants witness Arjanji Mafaji Thakor was examined at Exh.28. Over and above stating that his village was fully developed, it was mentioned by him that the lands acquired were highly fertile and that each claimant was getting net income of Rs.40,000/- to Rs.50,000/- per year per Vigha from sale of agricultural produces. During the course of recording of his testimony, the said witness produced previous award of the Reference Court relating to the lands of village Uvarsad rendered in Land Acquisition Case No.30/99 at Exh.24 and claimed that on the basis of said award the claimants should be awarded enhanced compensation after granting benefit of rise in price of lands at the rate of 10% per annum in view of gap of time in publication of notifications issued under Section 4(1) of the Act in the two cases. Though, this witness was cross-examined on behalf of the acquiring authorities, nothing substantial could be elicited from him.

6. On behalf of the acquiring authorities,witness Udesinh Karsanbhai Vaghela, who was then discharging duties as Deputy Collector and Special Land Acquisition Officer, O.N.G.C., Sabarmati was examined at Exh.30. According to him before determining the

market value of the lands acquired, the Special Land Acquisition Officer had taken into consideration all the relevant factors and, therefore, the claimants were not entitled to enhanced compensation.

7. On appreciation of evidence adduced by the parties, the Reference Court by award dated August 8,2005 awarded additional amount of compensation to the claimants at the rate of Rs.55/- per sq.mt. As noticed earlier, the claim of the claimants in First Appeal Nos.3202/06 to 3204/06 is that they are entitled to further additional amount of compensation at the rate of Rs.94.10 Ps. per sq.mt. They have also filed applications under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for permitting them to lead additional evidence at the appellate stage.

8. Another proposal was received by the State Government to acquire lands of village Uvarsad, Taluka and District Gandhinagar for the public purpose of drilling of Well No.EDW-4 of ONGC. On perusal of the said proposal, the State Government was satisfied that the lands of village Uvarsad specified therein were likely to be needed for the said public purpose. Therefore, a notification under

Section 4(1) of the Act was issued, which was published in the Official Gazette on April 14,1999. Thereafter, necessary inquiry as contemplated by Section 5A of the Act was made and a report was submitted by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on March 29,2000. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.500/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated January 25,2002 offered compensation to the claimants at the rate of Rs.22/- per sq.mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly References were made to the District

Court, Gandhinagar where they were numbered as Land Acquisition Reference Case No.59/02 to 61/02 and 63/02.

9. On behalf of the claimants witness Talaji Bachuji Thakor was examined at Exh.27. He also deposed before the Court that village Uvarsad was well developed and that the lands acquired were highly fertile. According to him the claimants were earning Rs.40,000/- to Rs.50,000/- per year per Vigha as income from the sale of agricultural produces. This witness also produced previous award of the Reference Court relating to the lands of village Uvarsad rendered in Land Reference Case No.30/99 at Exh.23 and claimed that the claimants were entitled to enhanced compensation on the basis of said award. It was also asserted by the said witness that the lands, which were previously acquired from village Uvarsad, were similar in all respects to the lands acquired in the instant case. This witness was also cross-examined on behalf of the acquiring authorities but nothing substantial could be elicited.

10. On behalf of the acquiring authorities witness Udesinh Karsanbhai Vaghela, who was then discharging

duties as Deputy Collector and Special Land Acquisition Officer, ONGC,Sabarmati was examined at Exh.29. According to him, the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired in the instant case and, therefore, the claimants were not entitled to enhanced compensation.

11. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated August 8,2005 has awarded additional amount of compensation to the claimants at the rate of Rs.47.30 Ps. per sq.mt., which has given rise to First Appeal Nos.3809/06 to 3812/06.

12. This Court has heard Mr.Ajay R.Mehta, learned counsel for the appellants in First Appeal Nos.3809/06 to 3812/06 as well as Mr.Yatin Soni, learned counsel for the claimant/claimants in each appeal and Mr.K.D.Pandya, learned Assistant Government Pleader for the the State at length and in great detail. This Court has also considered the evidence adduced by the parties before the Reference Court in both the cases.

13. In Civil Application Nos.476/07 to 478/07, the case of the claimants is that the previous awards of the Reference Court relating to the lands of village Adalaj, Village Vavol, village Shertha, village Sargasan, village Jamiyatpura are/were relevant for the purpose of determining market value of their lands,which are acquired from village Uvarsad, but those judgments could not be produced before the Reference Court because of their ignorance. What is claimed by the claimants therein is that a previous award of the Reference Court relating to a village which has attained finality can be relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired from the adjoining village and, therefore, previous awards of the Reference Court relating to the lands of villages mentioned above should also be taken into consideration while determining the question whether the claimants are entitled to higher compensation than awarded by the Reference Court. It is mentioned by the claimants that the fertility, potentiality and irrigation facilities as well as future prospects of village Uvarsad are the same as that of surrounding villages, namely,

Adalaj, Vavol, Shertha, Sargasan, Jamiyatpura. According to the claimants, even the crop pattern is also same in all the villages including village Uvarsad and, therefore, previous awards of the Reference Court relating to those villages should be taken into consideration while deciding the appeals filed by the claimants. The claimants have produced five awards and prayed that those awards be taken into consideration by the Reference Court as additional evidence before deciding the appeals in question.

14. Order 41 Rule 27 deals with production of additional evidence in appellate court, which reads as under:

> "27. Production of additional evidence in Appellate Court – (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if --
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> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
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> (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence

was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2)Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission”

15. From the averments made in Civil Application Nos.476/07 to 478/07 it is evident that the claimants seek to produce additional evidence, and have established that notwithstanding the exercise of due diligence, such evidence was not within their knowledge and therefore, they could not produce the same before the Reference Court at the time when the award appealed against was passed. It is well settled that though the judgment of the Reference Court relating to the lands of the same village is a relevant piece of evidence, the awards relating to adjoining villages relating to the similar lands subsequently acquired from adjoining village are also

relevant for the purpose of determining market value of the lands acquired subsequently. Therefore, this Court is of the opinion that the five previous awards, which are sought to be produced as additional evidence, may be relevant for the purpose of determining the market value of the lands acquired from village Uvarsad in the instant case. Further the learned counsels for the parties have also agreed that the additional evidence be permitted to be adduced and the matters be remanded to the Reference Court for fresh decision, after permitting the parties to adduce evidence. Under the circumstances, this court is of the opinion that Civil Application Nos.476/07 to 478/07 deserve to be granted and,therefore, the matters will have to be remanded to the Reference Court for deciding afresh after permitting the parties to lead further evidence.

16. As far as First Appeal Nos.3809/06 to 3812/06 are concerned, this Court finds that therein also the Reference Court had no advantage of taking into consideration the five previous awards of different villages adjoining to village Uvarsad, which may be relevant for the purpose of determining the market vale of the lands acquired from village Uvarsad in the instant cases. Therefore, those appeals also will

have to be allowed and the References will have to be remanded to the Reference Court for the purpose of determining the market value of the lands acquired after taking into consideration the relevancy of those five awards.

17. For the foregoing reasons, Civil Application Nos.476/07 to 478/07 are allowed and the applicants are permitted to lead additional evidence before the Reference Court. The judgment and award dated August 8,2005 rendered in Land Acquisition Reference Case Nos.2/02 to 4/02 as well as judgment and award dated August 8,2005 rendered in Land Acquisition Reference Case Nos.59/02 to 61/02 and 63/02 are hereby set aside. The matters are remanded to the Reference Court for deciding the matters afresh after permitting the parties to lead additional evidence. As the acquisition proceedings were initiated in the year 1997 and 1999, the Reference Court is directed to dispose of the References as early as possible and preferably within six months from the date of the receipt of the writ. The appeals are allowed to the extent indicted hereinabove. There shall be no orders as to costs.

As directed in Civil Application Nos.11613/06 to

11616/06, the applicant i.e. General Manager, O.N.G.C.,Sabarmati, Ahmedabad has deposited with the Reference Court the amount awarded to the claimant/claimants in each case. As the matters are remanded to the Reference Court for fresh decision, the Reference Court is directed to refund the said amount to the applicant after due verification.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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